

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF )  
FLOYD EQUIPMENT CO., )  
Appellant, )  
vs. )  
PUGET SOUND AIR POLLUTION )  
CONTROL AGENCY, )  
Respondent. )

PCHB No. 373

FINDINGS OF FACT,  
CONCLUSIONS AND ORDER

This matter, the appeal of a \$50.00 civil penalty for a conceded violation of respondent's Regulation I, came before two members of the Pollution Control Hearings Board (W. A. Gissberg, presiding officer, and Walt Woodward) at a formal hearing in the Board's office at Lacey, Washington, at 9:30 a.m., October 5, 1973.

Appellant appeared through its owner, Floyd J. Lamken; respondent appeared through its counsel, Keith D. McGoffin. Eugene E. Barker, Olympia court reporter, recorded the proceedings.

Witnesses were sworn and testified. Exhibits were admitted.

1 From testimony heard and exhibits examined, the Pollution Control  
2 Hearings Board makes these

3 FINDINGS OF FACT

4 I.

5 Appellant concedes that about 1:00 p.m. on May 3, 1973, its plant  
6 at 2208 Pacific Highway East, Tacoma, Pierce County, was in violation  
7 of Section 9.03 of respondent's Regulation I, in that its metal  
8 furnace stack emitted white smoke for 12 consecutive minutes of 100  
9 percent opacity as detailed in Notice of Violation No. 7713.

10 II.

11 Appellant contends, but did not prove, that respondent's inspector,  
12 who served Notice of Violation No. 7713, told appellant's plant  
13 manager that there would be no fine invoked by respondent as a result  
14 of the violation notice. He, therefore, appeals Notice of Civil  
15 Penalty No. 838, issued in connection with the violation in the sum of  
16 \$50.00.

17 III.

18 Respondent's inspector does not have respondent's authority to  
19 decide whether a civil penalty will be invoked for a violation.

20 IV.

21 Notice of Violation No. 7713 was stamped on its face with these  
22 words: "This Notice of Violation may be subject to penalties or other  
23 enforcement action."

24 From these Findings, the Pollution Control Hearings Board comes  
25 to these

26 FINDINGS OF FACT,  
27 CONCLUSIONS AND ORDER

1 CONCLUSIONS

2 I.

3 Appellant offered hearsay testimony to its contention that the  
4 inspector promised no penalty. Its manager, who might have given direct  
5 testimony in this regard, was not present and was not called as a  
6 witness. To the contrary, respondent presented direct testimony  
7 denial by the inspector of the allegation. Preponderance of evidence,  
8 therefore, rests on respondent's side.

9 II.

10 Notice of Civil Penalty No. 838, being one-fifth of the maximum  
11 amount which respondent may invoke for a violation of its Regulation I,  
12 is reasonable and lenient.

13 From these Conclusions, the Pollution Control Hearings Board issues  
14 this

15 ORDER

16 The appeal is denied and Notice of Civil Penalty No. 838 is  
17 sustained in the amount of \$50.00.

18 DONE at Lacey, Washington this 9th day of October, 1973.

19 POLLUTION CONTROL HEARINGS BOARD

20 Walt Woodward  
WALT WOODWARD, Chairman

21 W. A. Gissberg  
22 W. A. GISSBERG, Member

23 Mary Ellen McCaffree, the other member of this Board, did not  
24 participate in these proceedings.

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26  
27 FINDINGS OF FACT,  
CONCLUSIONS AND ORDER